



# **COMMONWEALTH of VIRGINIA**

*Office of the Attorney General*

September 5, 2007

Robert F. McDonnell  
Attorney General

900 East Main Street  
Richmond, Virginia 23219  
804-786-2071  
FAX 804-786-1991  
Virginia Relay Services  
800-828-1120  
7-1-1

The Honorable George W. Bush  
President of the United States  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

The Honorable Nancy Pelosi  
Speaker, U.S. House of Representatives  
Office of the Speaker  
H-232, US Capitol  
Washington, DC 20515

The Honorable Harry Reid  
Majority Leader  
U.S. Senate  
528 Hart Senate Office Bldg  
Washington, DC 20510

RE:   Illegal Immigration and Public Safety

Dear President Bush, Speaker Pelosi and Senator Reid:

I write on behalf of the citizens of the Commonwealth of Virginia to ask that you take immediate action to address the issue of illegal immigration, particularly illegal immigrants who commit crimes. Any crime committed by an illegal immigrant is one too many, and the recent news coverage of murders, DUI-related deaths, and fraudulent identification document crimes perpetrated by illegal aliens is resulting in an increasingly concerned citizenry. The borders are not yet secure, the administration and enforcement of the immigration system is cumbersome and ineffective, and the public safety problems caused by criminal illegal aliens are growing. This is unacceptable.

This week you return to Washington after the summer recess. After years of debate and inaction by the Congress and the President, I implore you to promptly enact effective and thoughtful legislation. If for some reason this issue cannot be acted upon during this regular session, I ask that pursuant to Article II, Section 3 of the United States Constitution, the President call a Special Session of Congress to focus on this matter of

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extraordinary national importance. It is imperative that you make this a top priority now for the good of the country.

The federal government has put the states in an untenable position: Congress has enacted laws which are not properly enforced due to the understaffing of the Bureau of Immigration and Customs Enforcement (ICE). At the same time, Congress has preempted enactment of state laws regulating employers who knowingly hire illegal aliens, and largely precluded states from enforcing federal immigration violations. It is intolerable that the federal government has failed to do its job, while severely limiting states from acting.

As the grandson of an immigrant from Ireland, I understand the importance of ensuring that those who want to immigrate legally, pursue the American dream, assimilate into the culture, and respect the rule of law, are afforded the opportunity to do so. The diversity of cultures and ideas in our society and government makes us strong, and we need targeted lawful immigration to support the legitimate needs of our free enterprise system. I note in particular the contributions of many Hispanic and Asian entrepreneurs who have immigrated lawfully and created new opportunities in Virginia. However, with the influx of citizens of foreign countries who do not respect the rule of law and who commit crimes against U.S. citizens or other immigrants, the very foundation of our government is challenged. You cannot permit this to continue.

Since becoming Attorney General of Virginia in 2006, I have seen first-hand that changes at the local, state and federal levels are required to address this increasing problem. I have sought amendments to state law to provide Virginia law enforcement agencies new legal tools permitted by federal law to protect Virginians from illegal aliens who commit crime. As was reported by the Virginia Crime Commission last week, the percentage of likely illegal aliens in Virginia jails alone ranges from 6% to 10%, with approximately 39% of those aliens being charged with a felony. This is costing Virginia taxpayers hundreds of millions of dollars in prosecution and incarceration expenses, in addition to avoidable victimization.

Nationally, ICE has reported that there are more than 632,000 illegal immigrants convicted of deportable offenses that have not been located, triple the number of just three years ago. A 2005 federal study of 55,000 incarcerated illegal immigrants showed most had multiple arrests and convictions, and the average number of arrests was eight. Enacting more effective detention and deportation proceedings will help shut this revolving door of injustice.

I have repeatedly asked Virginia's Governor to exercise his authority to enter into agreements with ICE permitted by Section 287(g) of the 1996 Amendment to the Immigration and Nationality Act, to permit limited state enforcement of federal

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immigration law concerning illegal aliens who commit serious crimes. The Governor has repeatedly declined to do so. I recently issued an official Attorney General's Opinion stating that local law enforcement agencies also have the authority to enter into a Memorandum of Agreement with ICE to address criminal illegal aliens, and a growing number have done so. Members of my senior staff and I have traveled to meetings throughout the state to explain to Virginia law enforcement agencies and local governments the very limited scope of authority they currently possess under state and federal law to address these problems. We have also met several times with ICE officials to try to find solutions in light of the significant resource limitations placed on them by Congress and the President. Despite these efforts, much more is needed.

To clarify the authority of state and local governments to act in support of federal policies, federal statutes which specifically pre-empt state action should be amended or repealed. One example is 8 USC § 1324a (h)(2), which expressly pre-empts state or local laws that would provide criminal or civil sanctions for those employers who knowingly hire illegal aliens. ICE acknowledges that while it is making efforts to enforce federal criminal laws in this area for large employers, it does not have the manpower to police the many other employers who knowingly hire illegal aliens. In order to effectively curb the flow of illegal aliens coming into the country, we must address employers who knowingly hire them contrary to federal criminal law.

Additionally, until proper resources are devoted to enforcement by the President and Congress, federal law should be amended to expand the authority of state and local authorities to temporarily detain illegal aliens until they can be taken into custody by federal immigration authorities. Funding should be provided to pay for the state detention of such illegal aliens until they can be deported. Virginia has already adopted into state law the very limited authority provided by 8 USC § 1252c regarding felons who have been deported and returned illegally to commit new crimes, but that is a relatively small number. Currently, the scope of state and local authority is both constrained and unclear given several recent federal circuit court cases, and conflicting legal positions between a 1996 legal memo and a 2002 legal memo from the United States Department of Justice on the subject. This authority should be clearly expressed and expanded within the federal code, so the states know what legal authority they possess.

Another critical issue is reform of the deportation process. I was shocked to learn that even though federal authorities are able to identify certain persons illegally present in the United States, they are unable to deport some of them to their country of origin because the United States does not have appropriate diplomatic relations with that country, or their system used to process deportees is ineffective. Some of those countries include Cuba, Iran, Vietnam, Iraq, Laos, China, and many of the former Soviet Republics. Obviously this creates a real public safety dilemma when illegal aliens from these countries have been convicted of a crime in the United States and cannot be

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deported. While I am not attempting to give advice on how to establish proper relations with these countries, it is totally inconsistent with sound public policy to give favorable trade status or a dollar of foreign aid to any such country which has saddled us with their criminals. It is imperative that the future trade status or foreign aid from the United States hinge on establishing the ability to deport foreign nationals who are in this country illegally, particularly those who commit crimes. (See attached the foreign aid status of these nations)

Further, we have been told by ICE officials that, due to serious resource constraints, they are unable to always detain those aliens whose criminal convictions render them deportable. ICE officials have indicated that they will attempt to prioritize the most serious offenders, but will consider a variety of factors, and therefore cannot provide me a list of those crimes which will always trigger detention and deportation. These vague guidelines make it very difficult to craft suitable state policies concerning detention of criminal illegal aliens. It is imperative that immediate ICE funding and staffing shortages be fixed so that clear detention and deportation standards can be implemented and routinely followed.

There is no doubt that most immigrants come to this great nation to pursue economic prosperity and greater freedom. Such is the promise of this marvelous nation, which continues to attract people from around the world. The magnet of liberty and hope here in America is to be celebrated. Yet, it is increasingly obvious that avoidable crimes are being committed against citizens of this country by illegal aliens, and that the current situation is a threat to public safety and our national security. As U.S. District Court Judge Samuel G. Wilson said in Harrisonburg, Virginia last month as he sentenced an illegal immigrant to prison, "He's entered the U.S. on multiple occasions and this time he was selling illegal documents. What am I supposed to think about that? Is there no rule of law here?" Precisely the right question.

It is your most fundamental obligation to the citizens of the United States to provide for their safety and security. I request that you do everything possible at the federal level to meet this obligation, including enabling and funding state and local agencies to assist you in your responsibilities. The time for talk and inaction is over. On behalf of the citizens of Virginia, I ask for action now.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert F. McDonnell", written in a cursive style.

Robert F. McDonnell

RFM/pdw  
Attachment

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cc: The Honorable Timothy M. Kaine, Governor  
The Honorable Michael Chertoff, Secretary  
The Honorable Paul Clement  
The Honorable John W. Warner  
The Honorable James Webb  
The Honorable Jo Ann Davis  
The Honorable Thelma S. Drake  
The Honorable Robert C. Scott  
The Honorable J. Randy Forbes  
The Honorable Virgil H. Goode, Jr.  
The Honorable Robert W. Goodlatte  
The Honorable Eric I. Cantor  
The Honorable James P. Moran, Jr.  
The Honorable Rick Boucher  
The Honorable Frank R. Wolf  
The Honorable Thomas M. Davis, III  
The Honorable William J. Howell  
The Honorable David B. Albo  
The Honorable Kenneth W. Stolle  
The Honorable Walter A. Stosch

U.S. FOREIGN ASSISTANCE PROVIDED OR REQUESTED FOR COUNTRIES THAT DO NOT  
ACCEPT THE RETURN OF THEIR NATIONALS

ANNEX 1 THE RETURN OF THEIR NATIONALS																								
2005 ACTUAL					2006 ACTUAL					2007 ESTIMATE					2008 REQUEST									
	DA	CSH	ESF	FSA	FMF	DA	CSH	ESF	FSA	FMF	DA	CSH	ESF	FSA	FMF	DA	CSH	ESF	FSA	FMF				
In Millions of Current U.S. Dollars																								
CHINA (PRC)						4.55		3.96			5.0	4.8	3.96				7.29	2.0						
CUBA			8.93			1.58		8.91					13.3					45.7						
INDIA	24.86	53.22	14.88			9.7	52.8	9.95			10.5	53.41	4.86			0.9	62.2							
IRAN																		75.0						
IRAQ								55.44					122.8					288.9						
LAOS												1.0	0.36				1.63	0.47						
SOMALIA	5.0	2.09				7.51					9.57	3.5				9.0	1.0							
VIETNAM	17.5	1.30				3.82		1.98			2.44		1.98					5.7						
FSU COUNTRIES																								
ARMENIA				24.3	7.94				69.0	3.96					58.0	3.83				35.0	3.0			
AZERBAIJAN		0.5		37.8	7.94				34.2	3.96					30.0	3.88				18.0	4.3			
BELARUS				6.9					11.48						11.0					10.0				
GEORGIA	2.0			86.0	11.9				67.73	11.83					58.0	9.7				50.5	10.0			
KAZAKHSTAN				26.7	4.96				24.75	3.47					20.0	3.33				14.4	2.0			
KYRGYSTAN				35.13	1.98				29.03	1.88					30.5	1.43				23.82	1.5			
MOLDOVA				17.4	0.45				17.82	0.5					16.0	0.48				13.3				
RUSSIAN FEDERATION	6.45			83.0			2.97		80.2			2.97			58.2					50.0				
TADIKISTAN				24.51	0.50				23.76	0.50					23.75	0.25				26.83	0.68			
TURKEMENISTAN				6.51	0.69				4.95	0.39					9.35	0.25				5.50				
UKRAINE	4.60			75.6	5.0		2.18		82.16	10.39		2.17			80.0	9.50				71.0	9.0			
UZBEKISTAN				31.5					17.82						35.0					15.0				